

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

ACE MOTOR ACCEPTANCE CORP.     )  
   )  
vs.   )     Civil Action No. 3:18-CV-630-KDB  
   )  
MCCOY MOTORS, LLC, et al.         )  
\_\_\_\_\_  
   )

RESPONSE TO CERTIFICATION BY COUNSEL

COME NOW the Defendants McCoy Motors, LLC, Robert McCoy, Jr., and Misty McCoy, and respond to the Certification by Counsel for Plaintiff filed by the Plaintiff on September 18, 2019 and shows the Court as follows:

ORDER CONCERNING INTERIM SERVICING OF ACCOUNTS, 6/25/18

1. Decretal Paragraph 2: Responding Defendants have turned over or made available all records they currently have control over that would respond to this paragraph, including bank records and vehicle buyer files . Specifically, the accounting referenced in this paragraph require records which are solely within the control of the Plaintiff.

2. Decretal Paragraph 3. Responding Defendants have turned over or made available all records they currently have control over that would respond to this paragraph, including bank records and vehicle buyer files . Specifically, the accounting referenced in this paragraph require records which are solely within the control of the Plaintiff.

3. Decretal Paragraph 4. Responding Defendants have turned over or made available all records they currently have control over that would respond to this

paragraph, including bank records and vehicle buyer files. Further information pertinent to this paragraph are contained in documents which are under the sole control of either the Plaintiff or a third party entity known as DealerSocket. DealerSocket has, to date, ignored a subpoena from the Plaintiff and several demands for information from the Responding Defendants.

4. Decretal Paragraph 5. Responding Defendants have made available all its physical files on vehicle buyer accounts, specifying what is generally contained in them and offering to deliver same to counsel for Plaintiff. To date, Plaintiff has not advised that they are interested in reviewing such documents. Further information pertinent to this paragraph are contained in documents which are under the sole control of either the Plaintiff or a third party entity known as DealerSocket. DealerSocket has, to date, ignored a subpoena from the Plaintiff and several demands for information from the Responding Defendants.

5. Decretal Paragraph 8. Responding Defendants have turned over or made available all records they currently have control over that would respond to this paragraph, including bank records and vehicle buyer files . Specifically, the accounting referenced in this paragraph require records which are solely within the control of the Plaintiff.

#### ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION, 8/1/18

6. Decretal Paragraph A(i). This paragraph requires Responding Defendants to cease collecting payments from Ace's customers. They have done so. The Certification filed by Plaintiff counsel speaks to accounting documents which are not referenced in this ordering paragraph and which, in any event, have either been made available to the Plaintiff (which has not shown any interest in reviewing) or solely within the control of either the Plaintiff or a third party, as stated above.

7. Decretal Paragraph A(ii). This paragraph requires Responding Defendants to direct all Ace customers to pay Ace. Responding Defendants have done so. Again in the Certification filed, Plaintiff speaks not to the requirements of this paragraph but to records which, as stated repeatedly earlier, have been turned over or made available, or which are solely within the control of either the Plaintiff or a third party.

8. Decretal Paragraph A(iii). Responding Defendants have no funds that fall under this paragraph. All banking records of McCoy Motors, LLC covering the time periods in question have been provided.

9. Decretal Paragraph A(iv): Since June of 2019, since new counsel has taken over, Responding Defendants have offered to cooperate fully with Plaintiff taking possession of the vehicles in question. Plaintiff has completely failed to do so. Further, Plaintiff was, in fact, ordered to take possession of these vehicles and move them and has failed to do so. As to documentation concerning these vehicles, as aforesaid, Responding Defendants have made available any documentation it currently has in its vehicle buyer files, which Plaintiff has shown no interest in reviewing.

10. Decretal Paragraph A(v): This paragraph requires Responding Defendants to cease contacting Ace customers. They have. The Certification speaks not to that but to speculation. It further states that “The McCoy Defendants refuse to provide information concerning the vehicle buyer accounts”, which is simply untrue. Responding Defendants have, in fact, offered to deliver all information they have to counsel for Plaintiff..

11. Decretal Paragraph A(vi). Responding Defendants have turned over all banking records for the last 12 months accounts were open..Other financial data Plaintiff speaks of simply does not exist. If there are further banking records Plaintiff would like, Responding Defendants will be happy to request them of the lending institutions.

12. Decretal Paragraph A(vii). At this point, Responding Defendants have turned over all funds which it has under this paragraph.

13. Decretal Paragraph A(ix). This paragraph orders the Responding Defendants to cease taking actions, which they have. Once again, the Certification speaks not to that but to other issues. As stated numerous times elsewhere, ALL documents within the control of Responding Defendants have either been delivered to counsel for Plaintiff or have been made available (indeed, with offers to deliver which have been turned down).

14. Decretal Paragraph A(x). This paragraph concerns the turnover of keys to vehicles. As noted previously, Responding Defendants have made all vehicles, including the keys, available for pick-up by Plaintiff for months. Plaintiff, despite being ordered by the Court to take possession of those vehicles, has failed to do so and now wants to imply that its failure to do so is somehow a continuing failure of Responding Defendants.

15. Decretal Paragraph A(xi). This paragraph orders Responding Defendants to cease certain activity. Which they have done. The Certification, yet again, deals with speculation and complains about records. The response as to records of the Responding Defendants is the same as noted many times previously. ALL records in Responding Defendants control have been turned over or made available.

16. Decretal Paragraph A(xii). This paragraph orders Responding Defendants to disclose the location of all assets of Ace. Other than the vehicles at the location, which Plaintiff has failed and refused to either inspect or take possession of, there is nothing else responsive to this request. The only other asset of McCoy Motors is a 2015 Ford tow truck.

17. Decretal Paragraph A(xiii). This paragraph orders Responding Defendants to cooperate with Ace in connection with various matters. Current counsel for Responding Defendants is unaware of any request by Ace since he has taken over that Responding Defendants have not exercised best efforts to comply with.

18. Decretal Paragraph B. All bank statements covering the time periods in question have been turned over. McCoy Motors has no open bank accounts and no funds to turn over.

19. In summary, the Certification is an attempt by the Plaintiff to continue to cite previous failures by the Responding Defendants. Since new counsel has taken over for Responding Defendants, all requirements for action, inaction, or production of documents that Responding Defendants have control over have been complied with to the best of their current ability. .

This the \_\_\_\_ day of September, 2019

**s/ Robert K Trobich**

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# CERTIFICATE OF SERVICE

I certify that this day I electronically filed and served a copy of the foregoing Motion upon each of the parties to this action through the CM/ECF system for the Western District of North Carolina.

This the 19th day of September , 2019

s/ Robert K Trobich  
NC State Bar no. 16190